

a heavy pipe to a band saw.¹ The Office accepted his claim for aggravation of preexisting right knee degenerative arthritis and authorized right knee arthroscopic debridement surgeries, which were performed on June 2, 1997 and October 5, 2001. By letter dated April 20, 1999, the Office placed appellant on the periodic rolls for temporary total disability.

On August 21, 2001 the Office issued a loss of wage-earning capacity decision based upon appellant's reemployment as an associate information technician analyst effective April 2, 2001. The Office found appellant had no loss of wage-earning capacity in his new position as he was earning more money than he would have earned in his date-of-injury position.

The Office also issued a schedule award decision on August 21, 2001 which awarded appellant a 19 percent permanent impairment to his right lower extremity.²

On January 15, 2005 appellant requested that the Office provide a motorized cart to perform his limited-duty job.

On March 22, 2005 Dr. Robert F. LaPrade, a treating Board-certified orthopedic surgeon, diagnosed "advanced arthritic changes in his right knee due to a chronic anterior cruciate ligament (ACL) tear and associated instability as well as mild right hip osteoarthritis." He concluded that a knee replacement was not appropriate due to appellant's age. Dr. LaPrade recommended purchase of a motorized cart to "help diminish [appellant's] knee pain and swelling and also should help to decrease the number of days he has had to take off because of this pathology."

On May 13, 2005 Dr. Eric Berkson, an Office medical adviser, opined that purchase of a motorized cart was unnecessary and recommended that a total knee replacement be considered.

In a report dated September 8, 2005, Dr. Paul Cederberg, a Board-certified orthopedic surgeon, opined that appellant no longer had any disability or residuals due to his accepted May 19, 1997 employment injury. He also concluded that appellant should not have a total knee replacement and that a motorized cart should be purchased, but not by the Office.

On October 25, 2005 appellant noted that he no longer needed the motorized cart due to his reassignment to the help desk which was more sedentary.

On November 4, 2005 the Office referred appellant to Dr. Jon Engelking, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. LaPrade, Dr. Berkson and Dr. Cederberg as to whether appellant continued to have residuals of his May 19, 1997 employment injury; whether he could return to his full-time regular duties

¹ The record contains evidence that appellant allegedly sustained a subsequent right knee traumatic injury at work on July 17, 1997. Appellant returned to a limited-duty job on March 27, 1998 and tendered his resignation at the end of the workday. On May 22, 1998 appellant was involved in an automobile accident and sustained injuries to his neck and back. The Office found that he had no wage-earning loss in his new position as he was earning more money than he would have earned in his date-of-injury position.

² By letter dated May 3, 2001, appellant was informed that his schedule award payment ended on April 20, 2002 and that he was entitled to additional medical treatment due to his accepted May 19, 1997 employment injury. He was advised that he was not entitled to additional wage-loss compensation.

and whether purchase of a motorized cart by the Office for residuals of his May 19, 1997 employment injury was warranted.

On December 19, 2005 Dr. Engelking, based upon a review of the medical evidence, statement of accepted facts and physical examination, concluded that appellant had no disability due to his accepted May 19, 1997 employment injury. He diagnosed “moderately severe to severe tricompartmental degenerative” right knee arthritis, which he attributed to appellant’s motorcycle accident as a teenager and prior “open medial lateral meniscectomies and anterior cruciate ligament deficiency.” A physical examination of the right knee revealed no effusion, “significant bony hypertrophy,” very free lateral, medial movement of the patella and no crepitus on active knee range of motion. Palpation of the patellofemoral joint revealed diffuse tenderness, but “no localization of that tenderness.” Dr. Engelking attributed appellant’s work limitation to his preexisting condition along with his significant degenerative knee arthritis, which he attributed to “his anterior cruciate deficient knee and medial and lateral meniscectomies.” In concluding, he opined that appellant sustained a temporary aggravation of his preexisting right knee arthritis. Dr. Engelking opined that appellant’s residuals were primarily due to his motorcycling injury as a teenager “and subsequent meniscal and ligament injuries.” Based upon his review of the records, he concluded that appellant “had severe degenerative changes of his knee prior to the work injury of May 19, 1997.” Any current disability and physical restrictions are due to appellant’s preexisting significant right knee degenerative arthritis and unrelated to the May 19, 1997 employment injury.

On April 6, 2006 the Office issued a notice of proposed termination of appellant’s medical benefits based upon the report of Dr. Engelking, the impartial medical examiner.

In a report dated April 19, 2006, Dr. LaPrade noted his disagreement with Dr. Engleking that appellant no longer has any disability or residuals due to the May 19, 1997 employment injury. In support of this conclusion, he noted that appellant had been “functioning quite well, without any problems” and that following the injury “he has not been able to get back to any higher level of function.” Dr. LaPrade opined that appellant sustained a permanent aggravation of his underlying arthritic condition “as he has continued to have problems with pain and swelling with activities since his work-related injury of May 19, 1997.” He also opined that appellant’s work restrictions “are directly related to his work injury of May 19, 1997.”

Appellant disagreed with the Office’s proposal to terminate his medical benefits and submitted argument and evidence to support his disagreement. He contended that he was entitled to have the cart purchased by the Office as he sustained a permanent injury. Appellant noted that the schedule award that the Office issued established his permanent disability as a result of his injury. He contended that the refusal of the Office to purchase the cart prevented him from performing his light-duty job and was a violation of due process.

In a “revised final termination” decision dated May 19, 2006, the Office terminated appellant’s medical benefits effective that date.

On June 4, 2006 appellant requested an oral hearing, which was held on February 7, 2007. He was represented by his father at the hearing and submitted medical and factual evidence.

On October 30, 2006 appellant contended that he was entitled to wage-loss compensation due to his termination effective May 30, 2006 from United Defense/BAE Systems.

On February 12, 2007 appellant resubmitted medical evidence previously submitted and considered by the Office and a September 27, 2006 Minnesota unemployment decision. The Minnesota unemployment law judge noted that appellant quit his position with BAE on May 30, 2006 as he believed his work restrictions were not being accommodated and that he was being discriminated against due to his disability.

On February 26, 2007 the Office received appellant's argument and additional evidence. In a February 1, 2007 report, Dr. LaPrade diagnosed right knee chronic anterior cruciate ligament tear, moderate to advanced right knee arthritic changes, semimembranosus bursitis, medial plicial irritation and milder right knee flexion contraction. He opined that appellant's employment injury "was certainly an exacerbating factor in precipitation of his arthritis, in that he had no previous symptoms."

By decision dated March 30, 2007, an Office hearing representative affirmed the May 19, 2006 decision.³ She also found that appellant had no continuing residuals or disability due to his accepted May 19, 1997 employment injury.

LEGAL PRECEDENT -- ISSUE 1

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.⁴

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background must be given special weight.⁵

ANALYSIS -- ISSUE 1

Appellant's claim had been accepted aggravation of preexisting right knee degenerative arthritis and authorized right knee arthroscopic debridement surgeries, which were performed on June 2, 1997 and October 5, 2001. The Board finds that the Office properly declared that a conflict in the medical opinion was created between Dr. LaPrade, appellant's treating Board-

³ Although the Office hearing representative actually affirmed the termination of "all" compensation benefits, the Board notes that appellant was not in receipt of wage-loss compensation benefits as the Office had reduced his loss of wage-earning capacity to zero effective April 2, 2001 based on his actual wages as an associate information technician analyst.

⁴ *T.P.*, 58 ECAB ____ (Docket No. 07-60, issued May 10, 2007); *John F. Glynn*, 53 ECAB 562 (2002).

⁵ *L.R. (E.R.)*, 58 ECAB ____ (Docket No. 06-1942, issued February 20, 2007); *Darlene R. Kennedy*, 57 ECAB ____ (Docket No. 05-1284, issued February 10, 2006); *James Mack*, 43 ECAB 321 (1991).

certified orthopedic surgeon, and Dr. Cederberg, a second opinion Board-certified orthopedic surgeon, as to whether appellant had any continuing residuals or disability causally related to his accepted May 19, 1997 employment injury. The Office also properly found a conflict in the medical opinion between Dr. LaPrade and Dr. Berkson, an Office medical adviser, as to whether the purchase of a motorized cart was necessary and whether total knee replacement should be considered. Dr. LaPrade opined that appellant continued to have residuals and disability due to his knee injury. He recommended the purchase of a motorized cart and opined that total knee replacement was not warranted. Dr. Cederberg concluded that appellant had no disability or residuals due to his May 19, 1997 employment injury. The Office medical adviser recommended that total knee replacement be considered and that the purchase of a motorized cart was unnecessary.

The Office referred appellant to Dr. Engelking, selected as an impartial medical specialist. In a detailed report dated December 19, 2005, he reviewed the evidence of record, statement of accepted facts and conducted a physical examination. Dr. Engelking opined that appellant sustained a temporary aggravation of his preexisting right knee arthritis due to the May 19, 1997 employment injury. He opined that appellant's right knee condition was primarily due to his motorcycling injury as a teenager "and subsequent meniscal and ligament injuries." In support of his opinion, Dr. Engelking concluded that appellant "had severe degenerative changes of his knee prior to the work injury of May 19, 1997" based upon a review of the record and, thus, appellant's current disability and physical restrictions were due to his preexisting significant right knee degenerative arthritis and unrelated to the May 19, 1997 employment injury.

On April 19, 2006 Dr. LaPrade noted that he had reviewed Dr. Engelking's report and disagreed with his conclusion that appellant had no disability or residuals due to the accepted May 19, 1997 employment injury. Dr. LaPrade opined that the May 19, 1997 employment injury had caused a permanent aggravation as appellant had been "functioning quite well, without any problems" and following the injury he was unable to get function as well. In addition, appellant had problems with swelling and pain following the May 19, 1997 employment injury and his current restrictions are directly related to the employment injury.

The Board finds that Dr. Engelking's report is entitled to special weight. He found that appellant sustained a temporary aggravation of a preexisting knee condition as a result of the May 19, 1997 employment injury. Dr. Engelking further concluded that any disability or residuals were due to appellant's preexisting right knee degenerative changes, which were due to his motorcycle accident as a teenager and subsequent ligament and meniscus injuries. His report is sufficiently rationalized and based on a proper factual and medical background. Thus, the Office met its burden of proof in the termination of medical benefits.

Appellant submitted additional reports from Dr. LaPrade in response to the proposed notice to terminate his compensation. It is well established that the subsequently submitted reports of a physician on one side of a conflict of medical opinion, are generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.⁶ In an April 19, 2006 report, Dr. LaPrade stated that he had reviewed Dr. Engelking's

⁶ *Kathryn E. Demarsh*, 56 ECAB ____ (Docket No. 05-269, issued August 18, 2005). *Richael O'Brien*, 53 ECAB

report and disagreed with his conclusion that appellant had no disability or residuals due to the May 19, 1997 employment injury. He opined that appellant sustained a permanent aggravation of his preexisting knee arthritis as a result of the May 19, 1997 employment injury. Dr. LaPrade based his opinion that the May 19, 1997 employment injury caused a permanent rather than a temporary aggravation as appellant had been “functioning quite well, without any problems” and that following the injury “he has not been able to get back to any higher level of function.” The Board finds this rationale insufficient to create a new conflict. Board precedent has held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting medical rationale, to establish causal relationship.⁷ The Board, therefore, finds these reports are insufficient to overcome the weight accorded Dr. Engelking, the impartial medical specialist, whose opinion was well rationalized and established that appellant’s employment-related residuals had ceased.⁸ The Office, therefore, met its burden of proof to terminate his medical benefits effective May 19, 2006.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant.⁹ In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between appellant’s diagnosed condition and the implicated employment factors.¹⁰ The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature

234 (2001).

⁷ *Roma A. Mortenson-Kindschi*, 57 ECAB ____ (Docket No. 05-977, issued February 10, 2006) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (the mere fact that employee was asymptomatic before the injury is insufficient, without supporting medical rationale, to establish causal relationship).

⁸ *Kathryn E. Demarsh*, *supra* note 6 (the reports from appellant’s physician reiterated his opinion on disability and, as he was one side of the conflict resolved by the impartial medical specialist, the additional reports were insufficient to create a new conflict as he essentially repeated his opinion on continuing disability).

⁹ *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

¹⁰ *Kathryn E. Demarsh*, *supra* note 6.

of the relationship between the diagnosed condition and the specific employment factors identified by appellant.¹¹

ANALYSIS -- ISSUE 2

The medical evidence submitted after the May 19, 2006 termination of benefits consists of a February 1, 2007 report from Dr. LaPrade and a September 27, 2006 Minnesota unemployment decision. Dr. LaPrade reiterated his opinion that appellant's May 19, 1997 employment injury "was certainly an exacerbating factor in precipitation of his arthritis, in that he had no previous symptoms. As noted above, the mere fact that appellant was asymptomatic prior to his injury, without supporting medical rationale, is insufficient to establish that appellant continues to have residuals of his accepted employment injury."¹² Dr. LaPrade's report is similar to his prior reports which gave rise to a conflict in medical opinion.¹³ As his opinion did not contain new findings or rationale upon which a new conflict might be based, it is insufficient to overcome that of Dr. Engelking or to create a new medical conflict.¹⁴ Appellant also submitted a September 27, 2006 Minnesota unemployment decision which found that he was discriminated against based upon his disability and that his restrictions were not accommodated. Decisions made by such tribunals are pursuant to different statutes that have varying standards for establishing disability and eligibility for benefits. The finding of that review board is not determinative of appellant's rights under the Federal Employees' Compensation Act and does not establish that he continues to have any residuals due to his accepted employment injury and is entitled to continuing compensation benefits.¹⁵ Appellant therefore did not submit the necessary rationalized medical evidence to substantiate that any claimed disability on or after May 19, 2006 was causally related to his federal employment.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective May 19, 2006. The Board further finds that appellant did not establish continuing disability or residuals causally related to the May 19, 1997 employment injury

¹¹ *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *Jaja K. Asaramo*, *supra* note 7.

¹³ See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. LaPrade's report did not contain new findings or rationale upon which a new conflict might be based.

¹⁴ See *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹⁵ See *Andrew Fullman*, 57 ECAB ____ (Docket No. 05-967, issued May 12, 2006) (the Board found the submission of a state unemployment compensation review board did not establish clear evidence that the Office erred in denying appellant's claim).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 30, 2007 is affirmed.

Issued: December 13, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board